

The 16th January, 1986

No. 9/5/84-6 Lab./11303.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala, in respect of the dispute between the workman and the management of M/s. The Executive Engineer, "OP" Division Haryana State Electricity Board, Ambala City.

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER, LABOUR COURT,
AMBALA

Reference No. 245 of 1984.
(Old No. 283 of 1983)

SHRI RAJ KUMAR, WORKMAN AND THE
MANAGEMENT OF THE MESSRS THE EXECU-
TIVE ENGINEER, 'OP' DIVISION
HARYANA STATE ELECTRICITY
BOARD, AMBALA CITY

Present:

Shri Rajeshwar Nath, for workman.

Shri P. S. Sharma, for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of its powers conferred,—vide clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, originally referred this dispute to Labour Court, Faridabad. The terms of the reference are as under:—

"Whether the termination of services of Shri Raj Kumar was justified and according to law? If not, is he entitled to relief claimed for?"

On constitution of this Court, in April, 1984, this reference was received by transfer.

Shri Raj Kumar alleged that he was appointed on daily wages as a labourer on 7th August, 1981. His services were terminated on 4th January, 1983, illegally in contravention of section 25(F) of the Industrial Disputes Act, 1947. He also alleged that certain junior persons were still in employment, later on, he was called for duty and he joined on 10th September, 1983, but again his services were terminated on 24th May, 1984. Shri Abdul Hamid, workman junior to him was retained in service so he prayed that he is entitled to reinstatement with continuity in service and

with full back wages. Respondent management contended that Shri Raj Kumar is not a workman in the definition of a workman given under the Industrial Disputes Act. So Labour Court has no jurisdiction to try the present reference. It was also contended that Haryana State Electricity Board is juristic person it has not been properly impleaded as a party. So reference is bad for non-joinder and misjoinder of the parties. It was also contended that the workman was employed on daily wages rates fixed by the Deputy Commissioner. His appointment was with the condition that if the work on which he has been engaged is completed his service shall be dispensed with without any prior notice and similarly the workman has been retrenched due to non-availability of material and work. So it was prayed that workman is not at all entitled to the relief claimed for.

Workman filed replication through which he denied the allegations of the respondent management.

On the pleadings of the parties the following issues were framed:—

I have heard authorised representatives of parties and have gone through the evidence placed on the file, my issuewise findings are as under:—

ISSUE NO. 1:

In support of this management examined Shri G. S. Gularia, Head Clerk, who deposed that workman was employed on daily wages with the condition that when there will be work with the department, he shall be kept in job in default of the same, his service shall be dispensed with. It was also made clear to him that he will be paid only for those dates for which he will work. He also stated that during the month of June, 1983, workman voluntarily did not report on duty when he came on 10th September, 1983, he was provided work. Thereafter in April, 1984, when there was no work with the department he was again retrenched. In this regard a notice was issued which was received back with the report and refusal. The appropriate authority was also informed retrenchment compensation was despatched through money order amounting to Rs. 450/- which was not accepted by the workman which is lying with the respondent Government. The Government was informed copy of that order is Ex. M-6. According to seniority list workman has been on rolls at serial No. 198. Total No. of workmen is 199. Correct copy of seniority list is Ex-M-1/1 to 7 be also stated that only Shri Abdul Hamid was skilled labourer he was not regular. His name was not in the seniority list. He being a skilled labourer was retained in service.

AW-1 Shri Girdhari Lal also stated that Shri Abdul Hamib was also employed on daily wages. He was a skilled labourer and was posted as a shift attendant. He has diploma in Electricity from I.T.I.

Shri Ram Kumar appeared AW-2 he stated that no notice was given to him regarding retrenchment of the service, no pay in lieu of notice period was paid to him and no retrenchment compensation was paid to him.

In view of above evidence the case of the management becomes very clear when it has stated that one month notice was issued to Shri Raj Kumar for terminating his service. Which came undelivered in other words workman refused to accept it. It is Ex-M-1 thereafter retrenchment compensation was despatched to workman through Money Order which was also not accepted by Shri Raj Kumar workman. Photostat copy in this regard is Ex-M5. appropriate authority in other words the Government of Haryana was informed about the retrenchment of Shri Raj Kumar workman, Photo stat copy of this letter is Ex-M-4.

The sole plea of the workman that Shri Abdul Hamib, junior to him was retained in service is also not tenable because the department has clarified its position for retaining Shri Abdul Hamib in its service on the ground that he is a skilled labourer being diploma-holder in Electricity from I.T.I. on the other hand Shri Raj Kumar is an ordinary unskilled labourer.

In view of my above discussions I think that the termination order regarding the service of Shri Raj Kumar workman is justified and in order so this issue is decided in favour of management against workman.

ISSUES NOS. 2 & 3 :

Issue Nos. 2 and 3 were not pressed nor arguments were advanced hence decided against the management.

ISSUE NO. 4 :

I hold that the workman has no claim and no relief is available against the management, so I pass my award accordingly.

Dated the 26th November, 1985.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endorsement No. 3019, dated the 5th December, 1985.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

* No. 9/5/84-6 Lab./11304.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala, in respect of the dispute between the workman and the management of M/s Haryana Roadways, Jind.

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER, LABOUR COURT,
AMBALA

Reference No. 159 of 1984.

(Old No. 69 of 1981)

SHRI RAJINDER KUMAR, WORKMAN AND
THE MANAGEMENT OF
M/S HARYANA ROADWAYS, JIND

Present:

Shri S. S. Gupta, for the workman.

Shri A. R. Goyal, for the respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred—vide clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred between Shri Rajinder Kumar and the Messrs General Manager, Haryana Roadways, Jind, to Labour Court, Rohtak. The terms of reference are as under:—

“Whether the termination of services of Shri Rajinder Kumar, workman, was justified and in order? If not, to what relief is he entitled?”

On constitution of this Court in April 1984, this reference was received by transfer.

Shri Rajinder Kumar, workman, alleged in his claim statement dated 3rd August, 1981, that he had been serving Haryana Roadways, as a Conductor for the last three years. His work and conduct had always been found satisfactory and he never afforded any opportunity of complaint of any kind. On 28th September, 1979, his services were terminated illegally by General Manager, Haryana Roadways, Jind, against the

principles of natural justice, rules and principles provided in CSR and constitution were not even followed. He has also alleged that the enquiry which was held against him, was also not proper and fair, he was never afforded an opportunity to defend himself. Even complaint was not examined by the Inquiry Officer nor any opportunity of cross-examining the witness was provided to him, so he has prayed that termination order may be declared null and void and he may be reinstated with continuity in service as well as with full back wages.

Respondent management has contested the present dispute by contending that the services of Shri Rajinder Kumar, workman were terminated after complying with prescribed procedure under the relevant rules, including the fair and proper domestic enquiry.

It was further urged that workman was never sincere and faithful to his duties on account of that several time he was found at fault and was punished. On 9th December, 1977 Shri Gazan Singh, Inspector, Haryana Roadways, Patiala, checked bus of the workman and found that 11 constables were travelling without tickets. Shri Rajinder Kumar had taken voucher in possession but did not issue tickets to those constables, so he got issued tickets and took in his possession which were un-punched. It was further asserted that fair and proper enquiry was held and proper opportunity of cross-examination leading defence and personal hearing were also given to the workman. Reply, defence were found unsatisfactory which resulted in termination of services of the workman.

Shri Rajinder Kumar, workman, submitted replication through which he converted stand taken by the respondent management.

On the pleadings of the parties the following issues were framed:

ISSUES:

1. Whether the enquiry conducted by the management is fair and proper? OPM
2. As per terms of reference? OPM

I have heard Shri S. S. Gupta, authorised representative of workman and Shri A. R. Goyal for the management and have perused the oral and documentary evidence placed on the file. My issue-wise findings are as under:

ISSUE No. 1:

In support of this issue management examined Shri Raj Singh, clerk deposed that on 9th December, 1978, show-cause notice Ex-MW-1 over one, charge-sheet Ex-MW-1/2 was served

upon the workman reply of the workman Ex-MW-1/3 which was found unsatisfactory there-after the Enquiry Officer submitted his report Ex-MW-1/4 statement of workman is Ex-MW-1/5 final show-cause notice is Ex-MW-1/6 reply of workman is Ex-MW-1/7. Thereafter, personal hearing was given by General Manager, to workman on 25th September, 1979, ultimately,—vide order Ex-MW-1/10 services of Shri Rajinder Kumar, were terminated.

The cross-examination of this witness is most significant when he stated that it is correct that along with Ex-MW-1/2 (Charge-sheet) no copy of complaint no list of witnesses were given to the workman he also admitted that he has brought the personal file of workman which is clean. Workman was never punished nor he committed any mistake. He also deposed that the Enquiry Officer did not examine Shri Gazan Singh, Inspector who had lodged report against the workman. He further stated that the General Manager, Haryana Roadways, Jind, nowhere expressed that the reply of final show-cause notice of workman was found unsatisfactory. He also nowhere mentioned in his record that he has examined the whole of the case of the workman and reach at the conclusion that the workman is at fault and due to the fact he has awarded him or he is awarding punishment of termination upon him.

MW-2 Shri Gazan Singh, Inspector was examined he supported his case in cross-examination he admitted that Inquiry Officer did not record his statement he denied suggestion that the police Voucher was not with the conductor.

MW-1 is Shri Rajinder Kumar he stated that 11 constables of police department boarded the bus he asked them either to produce the voucher or take tickets of making payment in cash they refused to do so. In the meantime Inspector appeared he narrated the whole tale to him but he was not satisfied and he submitted false complaint against him to the department.

After minutely examining the above evidence and affording thoughtful consideration to the whole matter, I am of the view that from the evidence available in the file the management has failed to establish fault of workman because first of all with the charge no list of witnesses, no copy of complaint was given to the workman.

Secondly, there is no record on the file that work of the workman Shri Rajinder Kumar was ever found unsatisfactory.

Thirdly, the Inquiry Officer did not bother to examine Shri Gazan Singh, Inspector who was complainant in this case, so due to his non-examination. The workman was not given opportunity to cross-examine the complainant which is one of the greatest lapse on the part of the Inquiry Officer.

Fourthly, statement of Shri Rajinder Kumar was also not recorded.

The Inquiry Officer also did not care to appreciate the defence taken by Shri Rajinder Kumar who specifically alleged that person who were found without tickets were 11 constables of Police Department. He asked them either to produce voucher for issuing the tickets or make payment in cash. The constables were reluctant to do so, in the mean time Shri Gazan Singh, Inspector appeared and did not listen to him. He took voucher in his possession unpunched the ticket and thereafter, filed false complaint against him.

On account of mis-behaviour by the constable of the police that on demand of voucher by the conductor. They did not perform their duty when inspector threatened them to charge 10 times fare at that time they produced voucher.

Even for the adverse it is to be admitted that the voucher was with the conductor and he did not issue tickets up to that stage when the bus was fully loaded and as the witness disclosed about it. In these circumstances also there was no opportunity with the conduct to do embezzlement. The voucher was to be deposited as it is by the conductor, i.e., with department (Cashier) along with the cash.

In view of my above discussions I/ reach at the conclusion that the domestic enquiry was not at all fair and proper, it has been vitiated as discussed above. Accordingly, this issue is decided in favour of workman against the management.

ISSUE No. 2:

In view of my discussions on issue No. 1 I have specifically held that the charges against the conductor were not very serious in other words those were concocted. It would be also proper to remark here that the Inquiry Officer did not conduct the inquiry in a proper way. He even did not bother to examine the complainant, question of affording any opportunity of defence etc., to workman in such circumstances does not arise.

Thus it is evident that the termination order dated 28th September, 1979, is null and void in other words illegal and unjustified so workman is entitled to re-instatement with continuity in service and with full back wages.

I pass my award regarding dispute in hand accordingly.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Dated the 26th November, 1985.

Endorsement No. 3020, dated the 5th December, 1985.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

No. 9/5/84-6 Lab./11305.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workman and the Management of M/s. Globe Engineering Works, 17, Industrial Area, Ambala City.

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER, LABOUR COURT,
AMBALA.

between

Reference No. 116 of 1984.

(Old No. 31 of 1983)

SHRI SUCHA SINGH, WORKMAN AND THE
MANAGEMENT OF THE MESSRS GLOBE
ENGINEERING WORKS, 17, INDUSTRIAL
AREA, AMBALA CITY.

Present:

Shri B. S. Saini, for the workman.

Shri R. L. Chopra, for the respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—vide clause (C) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, referred dispute between Shri Sucha Singh, workman and the management of the Messrs Globe Engineering Works, Ambala City, to Labour Court, Faridabad. The terms of the reference are as under:—

“Whether the termination of services of Shri Sucha Singh, workman was justified and in order? If not to what relief is he entitled?”

In April, 1984, Labour Court was constituted at Ambala, so this reference was received by transfer.

Workman Sucha Singh alleged in his demand notice, dated 3rd September, 1982, that he had been serving the management since October, 1979, as a Milling-man. On 1st August, 1982 his services were terminated in violation of section 25 (F) of the Industrial Disputes Act, 1947. Workman has prayed for the relief of his reinstatement with continuity in service and with full back wages.

Respondent management contested this dispute and contended that in fact workman joined service of respondent on 1st January, 1981 as a helper. He is covered under the E.S.I. Act. It was also contended that originally he joined in September, 1979 and left his job in January, 1980, and thereafter he again submitted his resignation on 8th July, 1982 and was relieved on 31st July, 1982. After few days workman came, he demanded an experience certificate of Milling-man but the management refused to oblige him in the pretext that the workman worked with the management as helper and not a Milling man. Workman used un-parliamentary language and left the factory premises in anguish. He again appeared on 13th August, 1982 apologised in writing regarding his mis-behaviour and again prayed for the experience certificate but management refused to honour his request. Out of this, grouse he filed demand notice with intention to harass the management.

Workman filed replication controverted the allegations of the management.

On the pleadings of the parties the following issues were framed for the just decision of this case.

ISSUES:

- (1) Whether the termination of services of Shri Sucha Singh, workman was justified and in order? If not, to what relief is he entitled?

I have heard Shri B. S. Saini, authorised representative of the workman and Shri R. L. Chopra, authorised representative of respondent-management and have minutely perused the oral and documentary evidence available on the file. My issue-wise findings are as under:—

ISSUE No. 1:

Since the onus of this issue was upon the respondent-management so management examined Shri S. P. Singla, as MW-1. He deposed that Shri Sucha Singh, workman used to work in the employment of respondent as a helper and used to get Rs. 305 P.M. He resigned from the service of his own and was relieved on 31st July, 1982. On 7th August, 1982, he demanded an experience certificate of a Miller-man,—vide his written request Ex-M-2. Management refused to oblige the workman and then he left in anguish. On 13th August, 1982, he again approached the management submitted his apology Ex-M-3 but the management stated that since the workman had not worked as a Miller-man so it was unable to issue a certificate of Miller-man to him.

Sucha Singh, workman appeared as AW-1. He examined Shri Balwinder Singh, his co-villager Ex-A-2. They both stated that the Ex-M-2 and Ex-M-3 do not bear the signatures of Shri Sucha Singh, workman.

In view of the above evidence it is admitted fact that workman was in the employment of the respondent. He had worked more than 240 days but the case of management is sound enough and it proves that in fact the workman submitted his resignation which was accepted. The bone of contention between the parties is that the management declined to oblige the workman for providing him an experience certificate of Miller-man, instead of, a helper. The behaviour of the management is very frank, it has not hidden any thing from the Court. MW-1 stated that workman joined service in 1979 and left job of the respondent in 1980. He again joined the services of respondent in January, 1981, and this fact finds support from the identity card issued by E.S.I. to the workman.

The mere plea of the authorised representative of the workman that name of Sucha Singh, remained appearing in the Attendance Register

even after 31st July, 1982, which was substituted by Shri Pala Singh, is not correct. Such a mistake can take place while copying down the names of the workmen who were on rolls in the previous month while carrying their names in the preceding new month and such a correction is possible. The written apology tendered by the workman clearly shows that it is not a case of termination or retrenchment by the management in fact workman himself resigned and left his job, so the relieving orders of the management is just according to law.

In view of my above findings regarding the dispute in hand I pass my award accordingly.

Dated the 5th November, 1985.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endorsement No. 2931, dated the 29th November, 1985

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

No. 9/5/84-6 Lab./11456. In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workman and the Management of M/s. Bhatia Publishers and Giri Printers, Ambala City.

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER, LABOUR COURT,
AMBALA.

Reference No. 305 of 1984.

(Old No. 42 of 1969)

SHRI K. K. SHARMA, WORKMAN AND THE
MANAGEMENT OF THE MESSRS BHATIA
PUBLISHERS AND GIRI PRINTERS,
AMBALA CITY.

Present:

Shri Rajeshwar Nath, for the workman.

Shri D. R. Batra, for the respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—vide clause (C) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, referred dispute between Shri K. K. Sharma, workman and the management of the Messrs Bhatia Publishers and Giri Printers, Ambala City, originally to Labour Court, Faridabad. The terms of reference are as follows :—

"Whether the termination of services of Shri K. K. Sharma, workman was justified and in order? If not, to what relief is he entitled?"

On creation of Labour Court at Ambala, in April, 1984, this reference was received by transfer.

The workman through this pleadings alleged that he was employed in the service of the management. He used to do the work of Accountant Agent and Salesman. Respondent-management issued a letter, dated 15th January, 1968. Stating therein that there was recession in the market and the respondent could not retain him. On the present terms and he should opt to work on a lesser wages Rs. 200 P.M. As higher financial burden can not be tolerated by the respondent concern. In default he should consider his services being retrenched and he should collect his dues from the management. He further alleged that this letter was duly replied by him with the contentions that the management had been running roaring business and there was no question of any recession in the market. If the management wanted to pay to him Rs. 200/- P.M., then he will work only two hours for the respondent and not for the whole day. But that offer was not accepted by the management and he was retrenched in violation of section 25 (F) of the Industrial Disputes Act, 1947.

The management contested the dispute and contended that due to recession in the market, they suffered heavy losses and were not in a position to retain the workman on old terms and conditions. Accordingly an offer was made to him that he should bear the difficult time with the management and work at lesser wages, but he refused to do so, which amounts to an abandonment of service and not retrenchment by the management. Management have informed the workman that he should collect his dues from the management but he failed to turn up in the premises of management and ultimately issued demand notice, hence the dispute is:

On the pleadings of the parties the following issues were framed :—

ISSUES:

- (1) Whether termination order dated 17th January, 1968, by the management of workman is justified if not its effect? OPM.
- (2) Whether application is bad on account of misjoinder of parties? OPM
- (3) Whether reference is bad as alleged Para m No. 5 of W.S.? OPM
- (4) Whether applicant has no cause of action as alleged? OPM
- (5) Whether claim is bad for want of details? OPM
- (6) Relief.

I have heard Shri Rajeshwar Nath for the workman and Shri D. R. Batra for the respondent-management and have perused the oral and documentary evidence placed on the file. My issuewise findings are as under.

ISSUE NO. 1

In support of this issue the management examined Shri S. L. Bhatia, as MW-1. He supported his contentions taken up in the reply. On the other hand, Shri K. K. Sharma appeared as AW-1 he supported his own case.

In view of the above statements of the parties and correspondence through letters copies of the same have been placed on the file. I reach at the conclusion that the management according to their contentions had been facing its bad days due to recession of its work in the market. A bonafide offer was made by the management to the workman to work at a lesser wages of Rs. 200 P.M. But workman did not agree and further imposed his own terms and conditions to work only for 2 hours for Rs. 200 which was not acceptable to the management. Ultimately, management offered to workman that he should collect his dues but the workman did not turn up to collect his dues ultimately he abandoned the job.

There is no evidence on the file that the management continued to run its business and even now it is running the same business. In other wards the management has wound up its business and is no longer in the market.

The main contentions of the workman authorised representative is that there is no compliance of section 25(F) is incorrect because the management gave an offer to the workman that he should collect his dues but he never turned

up to collect his dues. But he insisted his reinstatement without accepting the offer and condition of service of respondent-management which clearly shows that conduct of the workman is not above board in view of abandoning his service so question of retrenchment of services of workman does not arise, so this issue is decided in favour of management against the workman.

ISSUE NO. 2

At the time of issuing this demand notice both the concern Messrs Bhatia Publishers and Giri Printers so both have been made party to this litigation. Accordingly, the application is not bad. Hence this issue is decided in favour of workman against the management.

ISSUE NO. 3

Regarding this issue I would like to point out that once the reference was declined by the Government of Haryana against that order. Workman went to Hon'ble High Court where he get relief claimed for and, thereafter, the fresh reference was made to Labour Court for decision, so the contentions of the management is not proved reference in hand is not at all bad. Hence this issue is decided in favour of workman against the management.

ISSUE NO. 4

The applicant in fact has no cause of action to challenge the management because he himself abandoned the service and he was not retrenched. So this issue is decided in favour of management against the workman.

ISSUE NO. 5

There is no evidence on this issue so it is decided against the management.

ISSUE NO. 6

Relief.

For the foregoing reasons on the basis of my issuewise findings, I hold that in this case the workman voluntarily abandoned his job, he was never terminated. So, I pass my award accordingly regarding the dispute between the parties.

Dated the 10th December, 1985.

V. P. CHAUDHARY,

Presiding Officer,

Labour Court, Ambala.

Endorsement No. 3156; dated the 17th December, 1985.

Forwarded (Four Copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,

Presiding Officer,

Labour Court, Ambala.